

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK IMMIGRATION :
COALITION, et al., :
:
Plaintiffs, :
:
v. : Case No.
:
1:18-CF-05025-JMF
UNITED STATES DEPARTMENT :
OF COMMERCE, et al., :
:
Defendants. :

- - - - -x
Friday, October 12, 2018
Washington, D.C.

Videotaped Deposition of:

JOHN M. ABOWD, Ph.D.,
called for oral examination by counsel for the
Plaintiffs, pursuant to notice, at the law offices of
Arnold & Porter Kaye Scholer, LLP, 601 Massachusetts
Avenue, Northwest, Washington, D.C. 20001-3743,
before Christina S. Hotsko, RPR, CRR, of Veritext
Legal Solutions, a Notary Public in and for the
District of Columbia, beginning at 9:06 a.m., when
were present on behalf of the respective parties:

1 A. Yes.

2 Q. Do you know Dr. Habermann?

3 A. Yes.

4 Q. How long have you known him?

5 A. We first met in the early 2000s. He was
6 not the deputy director when I first started
7 working for the Census Bureau, but shortly
8 thereafter when he became the deputy director we
9 met.

10 Q. And are you familiar with Dr. Habermann's
11 professional qualifications?

12 A. Yes.

13 Q. Do you have question about his
14 qualifications to provide the opinions in his
15 report?

16 A. No.

17 Q. Now, you don't discuss Dr. Habermann's
18 report in your report, correct?

19 A. That's correct.

20 Q. Are you planning to express any opinions
21 about Dr. Habermann's report at trial?

22 A. It's the same general answer: To the

1 extent that my general opinions are comments on
2 the opinions that he offered, I would -- I would
3 be expressing them at trial.

4 Q. Do you remember anything specific beyond
5 that about his report that you intend to opine on
6 at trial?

7 A. I would -- I would be happy to do the
8 same thing for Dr. Habermann's report that I just
9 did for Mr. Thompson's if you would to do that.

10 Q. Sure. Let me get his report.

11 A. Sure.

12 MR. FREEDMAN: Let's mark this 4.

13 (Abowd Deposition Exhibit 4 marked for
14 identification and attached to the
15 transcript.)

16 BY MR. FREEDMAN:

17 Q. Before you dive too far in, can you
18 identify this for the record?

19 A. This is the September 7th expert report
20 of Dr. Hermann Habermann.

21 Q. Okay. And if you could go through the
22 report and identify, as you did with

1 A. Yes.

2 Q. You don't discuss Dr. Barreto's reports
3 in your report, do you?

4 A. Only in the same indirect way.

5 Q. Okay. Are you planning to express any
6 opinions about Dr. Barreto's report at trial?

7 A. Only in the same indirect way.

8 Q. Okay. Is there anything specific in his
9 report that you intend to -- intend to opine about
10 at trial?

11 A. I believe he misconcludes from his
12 analysis of the survey that he ran, and I will
13 opine on that if asked at trial.

14 Q. Okay. In what respect does he misopine
15 on the results?

16 A. He's basically measuring self-response
17 rates with an opinion poll methodology that I'm
18 not going to criticize for the purposes in which
19 they're generally used, but for the purposes of
20 producing population estimates of complete
21 non-response to the census, it's wholly
22 inappropriate. At best, it produces another

1 These are distinct quality measures that
2 we have -- I have consistently, both in fact and
3 in expert testimony, identified and quantified.
4 The fact that they can't be used directly to
5 produce a net undercount estimate hasn't affected
6 my opinion about whether the question should be on
7 the census. It hasn't affected the Census
8 Bureau's recommendation about the question.

9 It seems to me to be something that is
10 undocumented by the plaintiffs' experts and that I
11 specifically call out as undocumented in my expert
12 report.

13 Q. So I -- I understand that. And we'll
14 spend some time going through that language and --
15 just to make sure we understand exactly what your
16 view is.

17 You had a range, though, of criticisms of
18 Dr. Barreto, for example, in his main report about
19 his survey methodology and --

20 A. Right.

21 Q. -- survey design. Is any of that in your
22 report?

1 A. It is not.

2 Q. Putting aside your central criticism,
3 which I take is the misinterpret -- and if you
4 don't like my language, you can use your own
5 language -- but the misinterpretation of a decline
6 in self-response as signifying anything with
7 regard to an undercount, are the other criticisms
8 you have of Dr. Barreto's report discussed in your
9 report?

10 A. So let's make this easier. I didn't
11 specifically discuss anything about Dr. Barreto's
12 report when I wrote -- especially the version
13 that's in front of me, September 21st, I hadn't
14 even read it. I had read it when I wrote the
15 revised one, but I didn't feel that I needed to
16 comment specifically on his report, that I just
17 needed to document where the estimates that I used
18 in my report came from.

19 And I am relying on the analysis I did.
20 And I am not relying on the analysis that
21 Dr. Barreto did.

22 You asked me what I disagreed with, so I

1 Q. Your 1970 and your 1990 examples.

2 Were the Census Bureau's statistical
3 quality standards that govern the Census Bureau
4 today in effect in either 1970 or in 1990?

5 A. No.

6 Q. With regard to your 1970 example, which
7 is discussed on page 24 of your report, what is
8 your source of information for this analysis? And
9 it's fine -- if you want to consult Exhibit 2,
10 that's fine. We just should make clear on the
11 record that you're doing it.

12 A. I'm consulting Exhibit 2.

13 Oh, okay. It's in the footnote in both
14 places. It's that 1990 census content reinterview
15 survey study cited in footnote 39. Oh, sorry, no.

16 Q. Right. For the 1970 --

17 A. I think the problem here is you had a
18 summary paragraph, and I actually discuss the 1970
19 example. I know that I marked the sources, and
20 they're public, unlike the '92 experiment.

21 I can't figure out what happened to the
22 citation for that. I apologize for having to --